

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ASCENTIAL SOFTWARE CORPORATION

Plaintiff,

v.

XCENTIAL GROUP, LLC

Defendant.

MAGISTRATE JUDGE Coker

Civil Action No.

RECEIPT # 58120

AMOUNT \$ 150

SUMMONS ISSUED 4/7

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK.

DATE 8/20/04

COMPLAINT

Plaintiff ASCENTIAL SOFTWARE CORPORATION, by its undersigned attorneys, by way of
Complaint herein, alleges as follows:

THE PARTIES

1. Plaintiff ASCENTIAL SOFTWARE CORPORATION is a Delaware corporation having a place of business at 50 Washington Street, Westborough, Massachusetts 01581.
2. On information and belief, Defendant XCENTIAL GROUP, LLC is a California limited liability company having its principal place of business at 337 S. Kalmia Street, Escondido, CA 92025.

JURISDICTION AND VENUE

3. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1338(a) and (b), and pursuant to the doctrine of supplemental jurisdiction as codified in Title 28 U.S.C. § 1367.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c).

COUNT I - FEDERAL TRADEMARK INFRINGEMENT

5. From a date prior to the acts of Defendant complained of herein, Plaintiff has extensively used the marks and names ASCENTIAL and ASCENTIAL SOFTWARE in connection with, inter alia, data warehousing software and data integration software, as set forth in the trademark registration and trademark application specified herein. Plaintiff has provided these goods throughout the United States at its various offices, and has marketed these goods via its Internet website at **www.ascentialsoftware.com**, and its marks and names ASCENTIAL and ASCENTIAL SOFTWARE, and the goodwill associated therewith, have become extremely valuable assets of the company. Plaintiff's customers include legislative staff and counsel.

6. Plaintiff is the owner of the following United States Trademark Registration for the mark ASCENTIAL SOFTWARE (AND DESIGN):

<u>Mark</u>	<u>Reg. No.</u>	<u>Issued</u>	<u>Goods</u>
ASCENTIAL SOFTWARE (AND DESIGN)	2640730	October 22, 2002	Computer programs, namely, data warehousing software and data integration software for enabling and managing electronic commerce over a global computer information and communications network, and for enabling the transfer of data from one computer to another.

7. Plaintiff is also the owner of the following allowed trademark application for the mark ASCENTIAL:

<u>Mark</u>	<u>App. No.</u>	<u>Filed</u>	<u>Goods</u>
ASCENTIAL	76190533	January 5, 2001	Computer programs, namely data warehousing and data integration software for the management, analysis and integration of data, and the transfer of data from one computer, software application or database to another.

8. On information and belief -- notwithstanding Plaintiff's prior rights in its marks and names ASCENTIAL and ASCENTIAL SOFTWARE -- Defendant recently began to sell, in this district and elsewhere, software for managing legislative databases, under the similar mark and name XCENTIAL and the domain name **www.xcential.com**.

9. Defendant's use of the mark and name XCENTIAL and the domain name **www.xcential.com** in connection with its software products is likely to cause confusion, mistake, and deception as to the source of those goods. Customers and potential customers are likely to believe that those goods emanate from, or are sponsored or approved by Plaintiff, when that is not the fact. Any dissatisfaction with Defendant's goods may be falsely attributed to Plaintiff, thereby damaging irreparably Plaintiff's valuable reputation and goodwill vis-a-vis the marks and names ASCENTIAL and ASCENTIAL SOFTWARE.

10. Defendant's use of the mark and name XCENTIAL, and the Internet domain name **www.xcential.com** constitute an infringement of Plaintiff's federally-registered trademarks, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. Sec. 1114(1). Unless permanently enjoined by this court, the acts of Defendant will cause irreparable injury and damage to Plaintiff and its valuable trademark rights, for which damage and injury there exists no adequate remedy at law.

COUNT II - VIOLATION OF CHAPTER 93A, M.G.L.A.

11. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-10 above.

12. Plaintiff's use of the marks ASCENTIAL and ASCENTIAL SOFTWARE in connection with the development, marketing and distribution of database management software products and

services extending beyond the software products identified in the registration and application specified in paragraph 6 above.

13. Defendant's use of the mark and name XCENTIAL and the Internet domain name **www.xcential.com** constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of M.G.L.A. Ch. 93A, Section 2.

14. Plaintiff has been and is being damaged by said acts of Defendant.

COUNT III - COMMON LAW TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION UNDER 15 U.S.C. 1125(a) AND AT COMMON LAW

15. Plaintiff repeats and re-alleges the averments set forth in paragraphs 1-14 above.

16. Plaintiff's marks and names ASCENTIAL and ASCENTIAL SOFTWARE are distinctive of Plaintiff's goods and services, and the public has come to recognize those marks and names as identifying Plaintiff as the source of the high quality goods and services offered thereunder.

17. In view of the association by the public of the marks and names ASCENTIAL and ASCENTIAL SOFTWARE, and the Internet domain name **www.ascentialsoftware.com** with Plaintiff and its goods and services, Defendant's use of the mark and name XCENTIAL and the Internet domain name **www.xcential.com** for identical or closely-related goods and services, is bound to cause confusion, mistake, and deception of the relevant public as to whether Defendant's goods or services emanate from, or are sponsored or approved by, Plaintiff.

18. The conduct of Defendant complained of herein constitutes statutory and common law trademark infringement and unfair competition, all of which has damaged and will continue to damage irreparably Plaintiff's valuable goodwill unless enjoined by this court.

* * * * *

WHEREFORE, Plaintiff ASCENTIAL SOFTWARE CORPORATION demands judgment as follows against the Defendant:

A. That Defendant XCENTIAL GROUP, LLC be preliminarily and permanently enjoined from using the mark and name XCENTIAL, and any similar variation thereof.

B. That Defendant XCENTIAL GROUP, LLC be preliminarily and permanently enjoined from using the domain name **www.xcential.com** and any similar variation thereof.

C. That Defendants be required pursuant to 15 U.S.C. Sec. 1118 to deliver up for destruction any and all materials that include the mark or name XCENTIAL and/or the domain name **www.xcential.com**.

D. That Defendant be directed to file with this court and to serve upon Plaintiff within thirty days of service of the permanent injunction requested herein, a report in writing under oath, setting forth in detail the manner and form in which Defendant has complied therewith.

E. That Defendant transfer to Plaintiff the domain name **www.xcential.com** and any other domain name including the word "xcential."

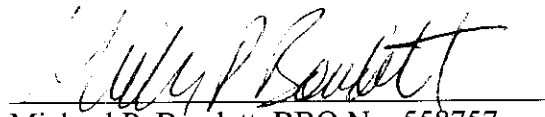
F. That Plaintiff ASCENTIAL SOFTWARE CORPORATION recover its costs in this action, as well as its reasonable attorney fees and expenses.

G. That this court grant such other order and further relief as it deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable.

ASCENTIAL SOFTWARE CORPORATION



Michael P. Boudett, BBO No. 558757
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
617/832-1000